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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1977

Nos. 77-991 and 77-5999

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Appellant

—*v.*—

GRACE AZNAVORIAN, ET AL.

GRACE AZNAVORIAN, ET AL.

Appellants

—*v.*—

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JURISDICTIONAL STATEMENTS FILED JANUARY 10 AND JANUARY 9, 1978 RESPECTIVELY
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DOCKET ENTRIES

DATE

11-25-75 Fld Complt (JS-5) Issd summons to U.S. Mars.

1-9-76 Fld return of service of summons as to F. David Mathews—Secretary—Department of Health, Education & Welfare, served 12-22-75.

2-20-76 Fld Defts ANSWER to complt w/ affid of serv. W/ certified copy of Transcript of the record.

3-2-76 Fld order for status conference for 5-28-76 @ 1:30 p.m. (GT) Mld cys.

4-13-76 Fld. summons return fld. 1-9-76 as to F. David Mathews.

4-29-76 Fld. deft's-Mot. to dismiss pltfs. Centro De Accion Social Autonomo & Casa Justicia, National City complt. & for S/J & Not. of mot., deft. brief in support of mot. and Affid. of serv. by mail. Not. for 5-24-76 @ 10:30.

5-4-76 Fld. defts-Memo. submitting attachments to brief in supp. of mot.

5-11-76 Fld. pltfs-Stip. and ord. re cont. of mot. to dimiss or for S/J. Con to 6-28-76 @ 10:30. (GT)

5-13-76 Fld. Pltfs, First set of Interrogs. t/w affid. of serv.

5-28-76 Ent. ord. S/ conducted. cont. to 6-28-76 @ 10:30 for hrg. mots. (GT)

6-9-76 Fld. ord. re S/C. (GT)

6-24-76 Fld. Stipulation and ord. re cont. of mot. to dismiss or in the 1 alternate for S/J cont. to 9-13-76 @ 10:30. (GT)

9-13-76 Ent. ord. mots. hrg. cont. to 10-11-76 @ 10:30am. (GT)

9-15-76 Fld. pltf. stip. and ord. re cont. of mot. to dismiss or in the alternate for S/J. Mot. cont. to 10-11-76 @ 10:30am. (GT)

DATE

10-1-76 Fld. pltff's notice of mot. to intervene as pltff's & mot. notice for 10-12-76 @ 10:30am.
Fld. pltff's not. of mot. and mot. for application for convening a three judge district court.
Filed combined mem. supporting mots. for intervention and application for conv. 3 ct. judge, & opposing deft's mot. to dismiss & for S/J. t/w affid. of serv.

LODGED Pltff's complt. in intervention. Fwrd. to Judge Thompson orig. one copy.

10-7-76 Fld. pltff. stipulation and ord dismissing Centro de Accion Social' Autonomo and Casa Justica. (GT) (Ent. 10-7-76)

10-12-76 Ent. ord. hrg. pltff. mot. to intervene, mot. to convene 3 judge court & mot. to dismiss cont. to 11-7-76 @ 10:30a.m. (GT)

10-21-76 Fld. stipulation for cont. and ord. theron. cont. to 11-1-76 @ 10:30am. (GT) for hrg. mots.

10-26-76 Fld. pltff. supplemental memo supporting mot. for intervention & application for convening. three judge ct. t/w affid. of serv.

10-27-76 Fld. deft. supplemental brief in opposition to convening of a 3-judge court and opposition to pltff. mot. to intervene t/w affid. of serv.

11-1-76 Fld. pltff. addendum to memoranda t/w affid. of serv.

10-29-76 Fld. pltff. reply memo. supportin application for convening 3 judge court & mots. for intervention t/w affid. of serv.

11-1-76 Ent. ord. hrg. mot. cont. to 11-8-76 @ 10:30am. (GT)
Fld. affid. of Jerry J. Bassett.

DATE

11-8-76 Ent. ord. hrg. mot. to intervene as pltff & mot. to dismiss S/J denied. Mot. to convene 3-judge ct. withdrawn. Atty. for pltff to prepared. (GT)
Fld. stipulated withdrawal of application for convening of three-judge court w/ord. theron. (GT)

11-16-76 Fld. pltff. notice of mot. & mot. for class action cert., memo of pts. & auths in support t/w affid, of servc. Ntc. for 11-29-76 @ 10:30am.

11-19-76 Fld. deft. objections to answering pltff. interrogs. t/w affid. of serv.

11-24-76 Fld. pltff. second set of interrogs to deft. t/w affid. of serv.

11-29-76 Ent. ord. hrg. pltff. mot. for class act. certification cont. to 1-20-77 @ 10:30am. (GT)

12-7-76 Fld. deft. stipulation for cont. of pltff. mot. to certify class action be cont. to 1-10-77 @ 10:30am. w/ord. theron. *(GT)

12-13-76 Fld. deft. notice of mot. & mot. to reconsider, memo of pts. & auths in support. of mot. Ntc. for 1-10-76 @ 10:30am. t/w affid. of serv.

12-27-76 Fld. deft. ANS. to interrogs. t/w affid. of serv.

1-6-77 Fld. stip. & ord. re cont. of pltff. mot. to certify class action & of deft's mot. re; reconsideration on 1-31-77 @ 10:30am. (GT)

1-20-77 Fld. notice of mot. & renewed mot. to intervene as pltffs memo of pts. & auths in support & affid. of serv. Ntc. for 1-31-77 @ 10:30am.
LODGED Amended complt. in intervention for declaratory relief. Fwrd. orig. + one to Judge GT.

1-25-77 Fld. pltff memorandum in opposition to deft's mot. for reconsideration t/w affid. of serv.
LODGED proposed ord. denying deft. mot. for S/J Fwrd. orig. + 2 to Judge. GT

DATE

1-31-77 Ent. ord. hrg. mots. cont. to 2-22-77 @ 10:30am. (GT)

2-2-77 Fld. stipulation & ord. re continuance of pending mot. to 2-22-77 @ 10:30am. (GT)

2-14-77 Fld. deft. supplemental memorandum in support of mot. for S/J
Fld. deft. brief in opposition to mot. to renew mot. to intervene
Fld. deft. brief in opposition to pltff mot. for class action
Fld. affid. of serv. of nos. 41 thru 43.

2-15-77 Fld. pltff supplemental memo in support of mot. for class action certificate t/w affid. of serv.

2-18-77 Fld. pltff. supplemental memo. in opposition to deft's mot. for reconsideration.

2-22-77 Ent. ord. hrg. pltff. mot. for class action cert.-mot. granted. Hrg. deft. mot. for court's reconsideration of oral comments-denied. Ct. will file an opinion hrg. pltfs renewed mot. to intervene as pltff on behalf of Anna Tolstick & Betsabe Rivas-denied. (GT)

2-28-77 Fld. deft. reply memorandum t/w affid. of serv.

3-16-77 Fld. pltff notice of mot. & mot. for order granting class relief, memo of pts. & auths in support & affid. of se rv. Nt. for 3-28-77 @ 10:30am.

3-24-77 Fld. pltff notice of mot. & mot. for clarification of class cert. memo in support of pltff mot. for clarification t/w affid. of serv.

3-28-77 Ent. ord. hrg. pltff mot. for order granting class relief-hrg. cont. to 4-4-77 @ 10:30am. (GT)

3-30-77 Fld. stipulation & order for cont. of mot. for class relief to 4-4-77 @ 10:30am. w/ ord. theron. (GT)

3-31-77 Fld. deft. response to pltff proposed order granting class relief. t/w affid. of serv.

DATE

4-4-77 Ent. ord. hrg. mots.—mot. for an order granting class relief & for clarification or class cert. cont. to 4-11-77 @ 10:30am. (GT)

4-5-77 Fld. pltff reply memorandum in support of mot. for class relief. t/w affid. of serv.

4-11-77 Ent. ord. hrg. pltff mot. for an order granting class relief granted. w/ modification. Hrg. pltff mot. for clarification of class cert. granted. Counsel for pltff submit proposed ord. (GT)

4-21-77 LODGED proposed ord. re class cert. Fwrd. orig. & one Judge Thompson.

8-12-77 Fld. opinion. Order to follow incorporating the conclusions contained in this opinion. (GT) (Ent. 8-12-77) Mld. cpys.

8-23-77 Fld. ord. granting mot. for class cerf., granting plfts mot. summy judgment & granting individual & class relief. Defts shall file a mot. informing all class members & serve a cpy on plfts w/in 30 days after entry of this ord. Objs to such ord shall be fld w/in 30 days of serv of prop ord. Defts to file an affed w/ct re srev of not. Further that this ct retain juris. of this cause until all relief has been effectuated. Further that the ct finds no reasons for delaying the enforcement of thes ord. (GT) (Ent 8-23-77)

8-31-77 Fld plft not of change of address of Atty. t/w affd of serv.

9-6-77 Fld judgment that the mot for class cert on behalf of the class as defined in the ord filed 8-23-77 is granted; Summary Judgment is granted to plfts; individual and class relief are granted pursuant to the provisions in the ord filled 8-23-77; and each party shall bear his or her own costs. (Ent 9-6-77) (GT) mld cys JS6

9-19-77 Fld change of address of atty PETER A. SCHEY TO Legal Aid Foundation of Los Angeles, 1550 West 8th Street, Los Angeles, Ca. 90017. t/w affd of serv.

DATE

9-22-77 Fld deft proposed notice to class t/w cert of serv.
Fld deft not of appeal t/w affd of serv.

10-4-77 Fld notice of cross-appeal from pltf frm judgmnt ent on 9-6-77.

10-17-77 Fld not of change of address of atty for plfts: VICTOR HARRIS, CALIFORNIA RURAL LEGAL ASSISTANCE, 115 Sansome Street, 9th Floor, San Francisco, Ca. 94104. (415) 421-3405. T/w affd fo serv.

10-26-77 Fld deft notice of mot & mot for partial stay of judgment set for hrg 11-14-77 @ 10:30am t/w defts memo in suppt & cert of serv.

10-25-77 Fld pltf objections to defts proposed class notice t/w declar of serv.

10-27-77 Fld deft submission of affid that was inadvertently not attached to memo, affid is of Audrey M. Hopkins t/w cert of serv.

11-14-77 Ent ord hrg defts mot for partial stay of jdgmt cont to 11-21-77 @ 10:30am. (GT)

11-21-77 Ent ord hrg defts mot for partial stay of jdgt, cnsl will file a stip cont the mot. (GT)

11-22-77 Fld stip cont defts mot for partial stay of jdgmt to 1-9-78 @ 10:30am

11-25-77 Fld notice of taking depos Audrey M. Hopkins & the officers, managing agents & employees of Social Security Admin. set for 12-2-77 @ 10am t/w declar of serv. Hrg taken at office of HEW cnsl J.Watson.

11-25-77 Fld pltf reqst for production of documents t/w declar of serv.
Fld defts response to pltfs objections to defts proposed class notice t/w cert of serv.

DATE

12-16-77 Fld Pltfs. appellee's Request to Clerk to Certify and Transmit Partial Record. (mld cys) NOTE: Per telephone conversation with Mr. Larsen at U.S. Supreme Court, Appeal is to be transmitted to U.S. Supreme Court as soon as possible.

12-22-77 Fld pltf notice of mot to mod ord w/ mot set 1-9-78 @ 10:30am t/w memo in suppt & declar of serv.

12-30-77 Fld Reporter's Trans. of Prcdgs. on 11-1-76 and 11-8-76, Original and one copy. (Jean Clarke, OCR).

1-3-78 Fld Notice of Withdrawal of Ian Fan as one of the attorneys for plaintiffs & approval thereon (GT) t/w Decl. of svc by mail.

1-5-78 Fld plt memo in Oppo to defts mot for partial stay of Cts order of 8-23-77 t/w declar of serv.

1-9-78 Ent ord hrg defts mot for partial stay of jdgmt & hrg pltfs mot to mod ord cont to 1-23-78 @ 10:30am (GT)

1-12-78 Fld stip cont defts mot for partial stay & pltfs mot to mod ord set 1-9-78 cont to 1-23-78 at 10:30am (GT)

1-16-78 Fld defts reply to pltfs memo in Oppo to defts mot for a partial stay of this Cts ord of 8-23-77 t/w affid of Audrey M. Hopkins & cert of serv.
Fld defts reply to pltfs mot to mod ord dated 8-23-77 t/w cert of serv.

1-18-78 Mld reptrs. trans. t/w Clerk's Record on Appeal to U.S. Supreme Ct.

1-19-78 Fld pltfs reply to defts response re class notice t/w declar of serv.

1-20-78 Fld depo of Audrey M. Hopkins & Robert Marder taken 12-2-77.

1-23-78 Ent ord hrg pltfs mot to mod ord—cnsl will attempt to stip, Hrg defts mot for partial stay of jdgmt Granted in part; Ct. will prepare ord. (GT)

DATE

2-7-78 Fld deft's filing of proposed order granting partial stay of judgmt t/w certif of serv by mail.
LODGED order & sent to Judge Thompson. (not going to be signed)

2-17-78 Fld plntf's obj to deft's proposed ord granting partial stay of judgmt t/w affid of serv.
LODGED plntf's proposed ord granting partial stay of judgmt & sent to Judge Thompson.

2-22-78 Fld pltf ord granting a partial stay of jdgmt til Supreme Ct. renders final decision in this action (GT)

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

[Filed Nov. 25, 1975]

Civil Action No. 75-1103-GT

GRACE AZNAVORIAN, individually (and on behalf of all other aged, blind or disabled persons similarly situated); Centro de Accion Social Autonomo, an unincorporated association; C.A.S.A. JUSTICIA, National City, an unincorporated association, PLAINTIFFS

v.

F. DAVID MATHEWS, Secretary of Health, Education, and Welfare, individually and in his official capacity, DEFENDANT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND RELIEF IN THE NATURE OF MANDAMUS

I

INTRODUCTION

Plaintiffs in this action challenge the constitutionality of Section 1611(f) of the Social Security Act, 42 U.S.C. section 1382(f), which provides as follows:

> "Notwithstanding any other provision of this title, *no individual shall be considered an eligible individual for purposes of this title for any month during all of which such individual is outside the United States* . . .
>
> For purposes of the preceding sentence, *after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 days.*" 42 U.S.C. 1382(f) (Emphasis added).

Plaintiff GRACE AZNAVORIAN, a recipient of Supplemental Security Income benefits, was denied her benefits for the months of August and September, 1974, after being outside of the United States from July 21, 1974 to September 1, 1974, pursuant to 42 U.S.C. 1382(f). Plaintiff AZNAVORIAN pursued all administrative remedies prior to initiating this action.

Plaintiffs allege that the above-mentioned statute violates the Due Process clause of the Fifth Amendment to the United States Constitution and further denies Equal Protection in that it creates a class of recipients who are precluded from establishing eligibility merely because they exercised their fundamental right to travel. 42 U.S.C. 1382(f), plaintiffs argue, fails under strict scrutiny, to promote a compelling government interest.

Plaintiffs pray for the issuance of declaratory and injunctive relief, and an order in the nature of Mandamus

against Defendant, and sums due to which plaintiffs are entitled.

II

JURISDICTION

1. Jurisdiction is conferred on this Court by Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), which states in relevant part:

> "(g) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision . . . Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides . . ." 42 U.S.C. 405(g).

Plaintiff AZNAVORIAN resides in San Diego County, California, and appeared at a hearing before a Hearing Examiner on February 21, 1975. Plaintiff appealed the decision of the Hearing Examiner to the Appeals Council, Social Security Administration, Deartment of Health, Education and Welfare. Said appeal was denied on or about September 26, 1975. This action is therefore authorized by 42 U.S.C. 405(g).

2. Plaintiffs seek declaratory relief pursuant to 28 U.S.C. sections 2201, 2202, and Rule 57, Federal Rules of Civil Procedures, as an actual controversy exists between the parties to this action as set forth herein.

3. Jurisdiction is further conferred on this Court by 28 U.S.C. section 1361, which gives to the district courts original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to a plaintiff.

III

THREE JUDGE COURT

4. 28 U.S.C. 2282 provides that an interlocutory or permanent injunction restraining the enforcement, operation or execution of "any Act of Congress for repugnance to the Constitution of the United States" shall not be granted by any district court or judge thereof unless the application therefor is "heard and determined by a district court of three judges" under 28 U.S.C. 2284.

Plaintiffs seek relief in the nature of declaratory relief, mandamus and injunctive relief against defendant, a federal officer, alleging that 42 U.S.C. 1382(f) is repugnant to the United States Constitution. This action is therefore a proper action to be heard by a three-judge panel pursuant to 28 U.S.C. 2282 and 28 U.S.C. 2284.

IV

PLAINTIFFS

5. Plaintiff GRACE AZNAVORIAN is a United States citizen residing in San Diego, California. Plaintiff AZNAVORIAN derives her income for food, shelter and the necessities of life, from Supplemental Security Income benefits (hereinafter, SSI), for which she has been determined to be eligible based on her disability. Plaintiff AZNAVORIAN left the United States on or about July 21, 1974, and returned to the United States on or about September 1, 1974. Plaintiff AZNAVORIAN travelled to Mexico for this period for health reasons and in order to obtain medical assistance. Plaintiff AZNAVORIAN has been denied her SSI benefits for the months of August and September, 1974, based on 42 U.S.C. 1382(f).

6. Plaintiff C.A.S.A. JUSTICIA, National City, also known as Centro de Accion Social Autonomo Justicia, (hereinafter, CASA), is an unincorporated association that has standing to initiate litigation on behalf of it's members, most of whom are Chicano and many of whom receive SSI benefits. Many of the members of CASA

have opportunity to depart from the United States for more than one month in order to visit relatives in Mexico or other foreign countries. Many members of CASA will have, and have had, their SSI payments terminated because of the action of defendant pursuant to 42 U.S.C. 1382(f).

7. Plaintiff Centro de Accion Social Autonomo Justicia, 2671 West Pico Boulevard, Los Angeles, California 90006, (hereinafter, LA-CASA), is an unincorporated association that has standing to initiate litigation on behalf of its members, most of whom are Chicano and many of whom receive SSI benefits. Many of the members of LA-CASA have opportunity to depart from the United States for more than one month in order to visit relatives in Mexico or other foreign countries. Many members of LA-CASA will have, and have had, their SSI payments terminated because of the action of defendant pursuant to 42 U.S.C. 1382(f).

V

DEFENDANT

8. Defendant F. David Mathews is the Secretary of the United States Department of Health, Education, and Welfare. Said defendant is used individually and in his official capacity as the official charged, under the Social Security Act, with primary responsibilities for the administration of the Social Security Administration, execution of its laws and promulgation of its regulations. 42 U.S.C. 405(a). In his official capacity, he is responsible for administering and inforcing 42 U.S.C. section 1382(f) and regulations promulgated thereunder, which provisions are challenged herein as being in conflict with the United States Constitution.

VI

CLASS ACTION ALLEGATIONS

9. Plaintiff AZNAVORIAN brings this action on behalf of herself and all others similarly situated under

Rule 23(a) and (b)(1) and (2) of the Federal Rules of Civil Procedure. The class represented consists of all persons, otherwise eligible for SSI, who have been denied SSI benefits solely pursuant to 42 U.S.C. 1382(f) and have exhausted their administrative hearings within sixty days prior to the filing of this action or at any time hereafter.

10. The size of the class is ascertainable from the records and files in the possession of defendant. The persons in the class are so numerous that joinder of all members is impracticable.

11. The questions of law and fact raised by plaintiffs are common to all members of the class, to wit: whether 42 U.S.C. 1382(f) violates Due Process and Equal Protection guaranteed by the Fifth Amendment to the United States Constitution in that it creates an irrebuttable presumption that persons who remain outside the United States for one month or more, cannot establish residence back in the United States for the first month during which they have physically returned to the United States, and further violates the fundamental right to travel. The claims of plaintiff AZNAVORIAN are typical of the claims of the class.

12. Defendant has acted similarly as to all members of the class as evidenced by the nationwide applicability of the subject statute.

13. Plaintiffs will fairly and adequately protect the interests of the class. There are no conflicts of interest between Plaintiffs and the members of the class. Plaintiffs are represented by attorneys employed by federally funded legal services programs with considerable experience in the area of public assistance litigation.

VII

FACTUAL ALLEGATIONS

14. On July 21, 1974, plaintiff AZNAVORIAN, Social Security Number 129-24-0891, an eligible recipient of Supplemental Security Income benefits, left the United

States for health reasons, proceeding to Guadalajara, Mexico, where she sought medical attention.

15. Plaintiff returned to the United States on September 1, 1974. On September 10, 1974, plaintiff had contact with the San Diego office of the Social Security Administration about her SSI benefits. Plaintiff was informed that she would not be eligible to receive SSI benefits for the month that she was outside the United States and for the first month that she resides back in the United States. Plaintiff, on September 10, 1974, submitted to the Social Security Administration a "Request for Reconsideration" form SSA-561, requesting reinstatement of SSI benefits.

16. On February 21, 1975, plaintiff appeared at an administrative hearing before Hearing Examiner Richard D. Eadie. A decision was rendered by the Hearing Examiner on March 31, 1975, finding that the undisputed evidence indicated that plaintiff was outside of the United States for a few days in excess of one month. The Hearing Examiner further found that plaintiff was therefore ineligible for SSI benefits for the months of August and September, 1974, pursuant to Social Security Act section 1611(f), 42 U.S.C. 1382(f).

17. Within 60 days thereafter, plaintiff filed a "Request for Review of Hearing Examiners Action" form HA-520a, with the Appeals Council. A written brief in support of the appeal was also submitted to the Appeals Council, raising the same constitutional challenges raised herein. The Appeals Council rejected the appeal on September 26, 1975, and plaintiff received said notification on October 2, 1975. This action followed.

VIII

CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION

18. The provisions of 42 U.S.C. 1382(f) creates a category of persons who are ineligible to receive SSI benefits. This category of persons is initially defined as

those individuals who remain outside the United States for one month or more.

19. This arbitrary classification penalizes plaintiff for exercising her fundamental right to travel outside of the United States protected by the Fifth Amendment to the United States Constitution. Any statutory scheme affecting plaintiff's Fifth Amendment right to travel must withstand a "strict scrutiny" standard of review and must justify a "compelling" government interest.

20. 42 U.S.C. 1382(f) creates two classes of needy persons, indistinguishable from each other except that one has remained in the United States, while the other has been outside the United States for one month. On this sole basis, the first class is granted, and the second class denied, SSI benefits upon which plaintiff depends for food, clothing, medical care, and the other necessities of life.

21. No adequate governmental justification exists for this arbitrary scheme which discriminates against recipients of SSI who remain outside of the United States for one month.

IX

SECOND CAUSE OF ACTION

22. 42 U.S.C. 1382(f) further provides that a person who has remained outside the United States for one month or more, is held to remain outside the United States, for eligibility purposes, for the first month that the person is physically back in the United States. That is, the person does not qualify for SSI benefits until the person has been back in the United States for one full month.

23. The statutory scheme imposes a 30 day *durational residency* requirement on individuals otherwise qualified for SSI benefits who are returning to the United States from a trip of one month or more outside of the United States.

24. This portion of the statute penalizes SSI recipients for exercising their Fifth Amendment right to travel outside of the United States.

25. This portion of the statute creates two classes of needy people, indistinguishable from one another except that one group has remained in the United States and the other has returned to the United States and has not yet remained in the United States for 30 consecutive days following their return.

26. By virtue of this arbitrary and capricious provision, plaintiff was denied for the first 30 days after returning to the United States the aid upon which she depended for food, clothing, medical care and other necessities of life.

27. No adequate compelling government justification exists for this arbitrary scheme which discriminates against individuals who are otherwise eligible for SSI benefits, including plaintiffs. It is therefore invalid as a violation of plaintiff's right of Due Process and Equal Protection as provided in the Fifth Amendment of the United States Constitution.

X

THIRD CAUSE OF ACTION

28. The provisions of 42 U.S.C. 1382(f), and the regulations promulgated thereunder, denies Plaintiffs the opportunity to prove the salient facts regarding their residence for purposes of SSI eligibility, and imposes a conclusive presumption of non-residency for the first 30 days that the person is back in the United States.

29. The statutory scheme therefore denies Plaintiff's right to Due Process and Equal Protection under the Fifth Amendment.

XI

DECLARATORY RELIEF

30. An actual controversy exists between Plaintiffs and Defendant in that Plaintiffs contend that 42 U.S.C. 1382(f) violates their rights to Due Process and Equal Protection under the Fifth Amendment for reasons cited above. An order from this Court is required to resolve this controversy.

XII

INJUNCTIVE RELIEF

31. Defendant is now, and unless restrained by the Court, will continue to apply 42 U.S.C. 1382(f) to deny SSI benefits in whole or in part to persons otherwise eligible therefor.

32. Unless Defendant is restrained from further application of 42 U.S.C. 1382(f), Plaintiffs and the class of persons whom they represent will suffer immediate and irreparable injury in that they will be wrongfully denied the SSI benefits to which they are entitled, thereby depriving them of the means to obtain the basic necessities of life.

33. Plaintiffs and the class of persons whom they represent have no adequate remedy at law. The damage to them caused by Defendant is beyond pecuniary valuation and compensation.

XIII

MANDAMUS

34. Defendant is under a mandatory duty, imposed by the Fifth Amendment of the United States Constitution, to pay SSI benefits to all persons eligible therefor.

35. Defendant has announced his intention not to recompense Plaintiffs and the members of their class for the period of time during which they were outside of the United States for one month or more and for the first 30 days in which they are back in the United States as the result of the application of 42 U.S.C. 1382(f).

36. By refusing to pay the Plaintiffs and their class the benefits to which they would have been entitled, but for 42 U.S.C. 1382(f), Defendant fails to perform the duties enjoined upon him by the Fifth Amendment of the United States Constitution.

37. Plaintiffs and the class they represent have no adequate remedy available at law other than this suit to enforce the duty owed them by Defendant.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray that this Court:

1. Assume jurisdiction of this case;
2. Convene a three-judge court, pursuant to 28 U.S.C. sections 2282 and 2284, and set this case promptly for a hearing and determination of this controversy;
3. Certify this action as a class action pursuant to Rule 23, Federal Rules of Civil Procedure;
4. Issue preliminary and permanent injunction, and a writ in the nature of mandamus, enjoining Defendant, his agents, employees, and all persons acting in concert with him from enforcing the provisions of 42 U.S.C. 1382(f) and from treating SSI recipients and applicants as being outside of the United States for the first 30 days they spend in the United States after returning from a trip of one month or more outside the United States.
5. Enter a final judgment declaring that 42 U.S.C. 1382(f) is void and invalid as being violative of due process and equal protection rights guaranteed by the Fifth Amendment to the United States Constitution;
6. Enter a final judgment ordering Defendant to pay to each Plaintiff and each class member the sum of benefits which would have been paid but for the operation of 42 U.S.C. 1382(f).
7. Award to Plaintiffs reasonable attorneys' fees to be paid directly to their attorneys and their costs of suit and disbursements.

8. Award such further relief as the Court deems just and proper.

DATED: November 25, 1975

Respectfully submitted,

/s/ Peter A. Schey
PETER A. SCHEY
ROBERT BURKHOLDER
VICTOR HARRIS
DOROTHY LANG
RALPH S. ABASCAL
Attorneys for Plaintiffs

VERIFICATION

I, PETER A. SCHEY, declare:

I am an attorney at law duly admitted and licensed to practice before this Court and am one of the attorneys for the plaintiffs in the matter herein.

I have read the foregoing complaint and know the contents thereof.

The same is true of my knowledge, except as to those matters which are therein stated on information and belief, and as to those matters which are therein stated on information and belief, and as to those matters I believe it to be true.

I make this verification because the facts set forth in said complaint are within my knowledge and because as attorney for the plaintiffs herein, I am more familiar with such facts than are the parties.

Executed this 24th day of November, 1975, in the City of San Diego, County of San Diego, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Peter A. Schey
PETER A. SCHEY
Attorney for Plaintiffs

TERRY J. KNOEPP
United States Attorney
WILLIAM A. SHAW
Assistant U.S. Attorney
United States Courthouse
325 West F Street, Annex A
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Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 75-1103-GT

[Filed Feb. 20, 1976]

GRACE AZNAVORIAN, etc., et al., PLAINTIFFS

v.

F. DAVID MATHEWS, Secretary of Health, Education, and Welfare, etc., DEFENDANT

ANSWER

COMES NOW the defendant, F. David Mathews, by and through his attorneys, Terry J. Knoepp, United States Attorney, and William A. Shaw, Assistant U.S. Attorney, and in answer to plaintiffs' complaint, states as follows:

1. Defendant admits the allegations of paragraph 1 of plaintiffs' complaint, except that defendant states that jurisdiction is authorized by section 205(g) of the Social Security Act, 42 U.S.C. § 405(g) which is made applicable to SSI (Title XVI) cases by section 1631(c)(3) of the Social Security Act, 42 U.S.C. § 1383(c)(3).

2. With respect to paragraph 2, defendant denies that jurisdiction is conferred on the court by 28 U.S.C. § 2201 and § 2202, and Rule 57 of the Federal Rules of Civil Procedure.

3. With respect to paragraph 3, defendant denies that jurisdiction is conferred on the court by 28 U.S.C. § 1361.

4. With respect to paragraph 4, defendant denies that this is a proper action to be heard by a three-judge panel pursuant to 28 U.S.C. §§ 2282 and 2284.

5. Defendant admits paragraph 5, except that defendant neither admits nor denies the alleged reason for plaintiffs' trip to Mexico.

6. With respect to paragraphs 6 and 7, defendant is without knowledge or information sufficient to form a belief as to the allegations therein.

7. Defendant admits paragraph 8.

8. With respect to paragraphs 9, 10, 11, 12, and 13, defendant denies that this is a proper case for class certification.

9. Defendant admits paragraphs 14, 15, 16, and 17, except that defendant neither admits nor denies the alleged reason for plaintiffs' stay in Mexico.

10. Defendant admits paragraph 18.

11. With respect to paragraphs 19, 20, and 21, defendant denies that the statutory classification is arbitrary or that it penalizes plaintiff in the exercise of any Constitutional right. Defendant states that adequate justification for the scheme exists when tested against the proper standard of review.

12. Defendant admits paragraph 22.

13. With respect to paragraphs 23, 24, 25, 26, and 27, defendant denies that the statutory scheme operates to unconstitutionally penalize SSI recipients for the exercise of Fifth Amendment rights. Defendant states that the challenged provision is neither arbitrary nor capricious, and that adequate governmental justification exists when tested against the proper standard of review.

14. With respect to paragraphs 28, and 29, the defendant denies that the challenged statute imposes a conclusive presumption in violation of plaintiffs' Fifth Amendment rights.

15. With respect to paragraph 30, defendant denies plaintiffs' right to declaratory relief. Defendant states that 42 U.S.C. § 1382(f) in no way violates plaintiffs' rights to due process and equal protection.

16. Defendant admits paragraph 31.

17. With respect to paragraph 32, defendant denies that further application of 42 U.S.C. § 1382(f) will cause immediate and irreparable injury or wrongfully deny benefits to anyone. Therefore, defendant states that injunctive relief would be improper.

18. Defendant denies the allegations in paragraph 33.

19. Defendant admits paragraphs 34 and 35.

20. Defendant denies paragraphs 36 and 37, and states that plaintiff has no right to a remedy in the nature of mandamus.

In accordance with the provisions of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), defendant files herein as part of his answer a certified copy of the transcript of the record, including the evidence upon which findings and decisions complained of are based.

WHEREFORE, defendant prays for judgment dismissing the complaint with costs and disbursements, and for judgment in accordance with section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), as made applicable herein by section 1631(c)(3) of the Social Security Act, 42 U.S.C. § 1383(c)(3), affirming the decision complained of.

DATED: February 20, 1976

TERRY J. KNOEPP
United States Attorney

/s/ William A. Shaw
WILLIAM A. SHAW
Assistant U.S. Attorney

TERRY J. KNOEPP
United States Attorney
D. MICHAEL WALTZ
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Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 75-1103-GT

[Filed Apr. 29, 1976]

GRACE AZNAVORIAN, etc., et al., PLAINTIFFS

v.

F. DAVID MATHEWS, Secretary of Health, Education, and Welfare, etc., DEFENDANT

DEFENDANT'S MOTION TO DISMISS PLAINTIFFS CENTRO DE ACCION SOCIAL AUTONOMO AND CASA JUSTICIA, NATIONAL CITY COMPLAINT AND FOR SUMMARY JUDGMENT

COMES NOW the defendant, D[illegible] F. David Mathews, by and through his attorneys, Terry J. Knoepp, United States Attorney, for the Southern District of California, and D. Michael Waltz, Assistant U.S. Attorney, and respectfully moves the Court to dismiss the complaint herein, or in the alternative, grant the defendant summary judgment. A brief in support of this motion is herewith submitted.

DATED: April 27, 1976

TERRY J. KNOEPP
United States Attorney

/s/ D. Michael Waltz
D. MICHAEL WALTZ
Assistant U.S. Attorney

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Civil Action No. 75-1103-GT

[Filed May 13, 1976]

GRACE AZNAVORIAN, et al., PLAINTIFFS

vs.

F. DAVID MATHEWS, Secretary of Health, Education and Welfare, individually and in his official capacity,
DEFENDANTS

PLAINTIFFS' FIRST SET OF INTERROGATORIES

TO: Terry J. Knoepp, U.S. Attorney
D. Michael Waltz, Asst. U.S. Attorney
United States Courthouse
325 West F Street, Annex A
San Diego, California 92101

Plaintiffs request that defendant, or his authorized agent, answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure and Rule 6(b) of the Rules of Civil Procedure of the United States District Court for the Southern District of California, the following interrogatories:

1. Please state the total number of Supplemental Security Income recipients whose monthly benefits were suspended, interrupted or denied pursuant to 42 U.S.C. § 1382(f), during each of the following time periods:

(a) Calendar year 1974;

(b) Calendar year 1975; and

(c) January 1976 through April 1976.

2. Please state the total number of Supplemental Security Income recipients whose monthly benefits were suspended, interrupted or denied pursuant to 42 U.S.C. § 1382(f) since 1974, and whose suspension, interruption or denial was affirmed after a *Request for Reconsideration* during each of the following time periods:

(a) September 26, 1975 through November 25, 1975;

(b) November 26, 1975 through May 10, 1976.

3. Please state the total number of Supplemental Security Income recipients whose monthly benefits were suspended, interrupted or denied pursuant to 42 U.S.C. § 1382(f) since 1974, and whose suspension, interruption or denial was affirmed after a hearing before a Hearing Examiner during each of the following time periods:

(a) September 26, 1975 through November 25, 1975;

(b) November 26, 1975 through May 10, 1976.

4. Please state the total number of Supplemental Security Income recipients whose monthly benefits were suspended, interrupted or denied pursuant to 42 U.S.C. § 1382(f) since 1974, and whose suspension, interruption or denial was affirmed after a *Request For Hearing* determined without oral proceedings during each of the following time periods:

(a) September 26, 1975 through November 25, 1975;

(b) November 26, 1975 through May 10, 1976.

5. Please state the total number of Supplemental Security Income recipients whose monthly benefits were suspended, interrupted or denied pursuant to 42 U.S.C. § 1382(f) since 1974, and whose suspension, interruption or denial was affirmed upon a *Request For Review* by the Social Security Administration's Appeals Council during each of the following time periods:

(a) September 26, 1975 through November 25, 1975;

(b) November 26, 1975 through May 10, 1976.

6. For *each* of the totals you provided in answering interrogatories 1 through 5, please list the number of such recipients who received their Supplemental Security Income benefits in California immediately prior or subsequent to suspension, interruption or denial pursuant to 42 U.S.C. § 1382(f).

7. Please identify the sources and records upon which you base your answers to interrogatories 1 through 6.

7(a) Please state the names, official positions, and last known business addresses of each custodian of such records.

8. Please state the full names, business addresses, and official positions of each person who participated in providing the answers to these interrogatories.

9. Please state the full name, present business address, and official position or relation to defendant Mathews of the person signing or verifying the answers to these interrogatories.

Please take notice that a copy of such answers must be served upon the counsel for plaintiffs within 30 days after the service of these interrogatories.

DATED: May 10, 1976

By /s/ Victor Harris
VICTOR HARRIS
Attorney for Plaintiffs

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Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil Action No. 75-1103-GT

[Filed Nov. 3, 1976]

GRACE AZNAVORIAN, et al., PLAINTIFFS

vs.

F. DAVID MATHEWS, etc., DEFENDANT

STIPULATED WITHDRAWAL APPLICATION FOR CONVENING OF THREE-JUDGE COURT

Comes now plaintiff Grace Aznavorian, and intervenors Anna Tolstick and Betsabe Rivas, individually and on behalf of all other persons similarly situated, and withdraw without prejudice the Application for Convening of a Three-Judge Court filed herein. The basis for said withdrawal of application is that plaintiffs and intervenors hereby abandon, without prejudice, all requests heretofore entered to enjoin defendant from enforcing 42 U.S.C. § 1382(f) and any jurisdictional assertion under 28 U.S.C. § 1361 contained in the Complaint and Complaint for Intervention. Plaintiffs and intervenors expressly retain all class action, declaratory and other claims for relief concerning the unconstitutionality of 42 U.S.C. 1382(f), under 42 U.S.C. §§ 1383(c)(3) and 405(g).

Plaintiffs and defendant stipulate herein to a withdrawal of plaintiffs allegations and claims as stated above.

DATED: NOVEMBER 5, 1976

/s/ Peter A. Schey
PETER A. SCHEY
One of the attorneys for Plaintiffs

/s/ D. Michael Waltz
D. MICHAEL WALTZ
Assistant U.S. Attorney
Attorney for Defendant

IT IS SO ORDERED.
DATED 11-8-76

/s/ Gordon Thompson, Jr.
United States District Judge

TERRY J. KNOEPP
United States Attorney
D. MICHAEL WALTZ
Assistant U.S. Attorney
United States Courthouse
940 Front Street, Rm. 5-N-19
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Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 75-1103-GT

[Filed Nov. 19, 1976]

GRACE AZNAVORIAN, et al., PLAINTIFFS

v.

F. DAVID MATHEWS, Secretary of Health, Education and Welfare, DEFENDANT

DEFENDANT'S OBJECTIONS TO ANSWERING PLAINTIFF'S INTERROGATORIES

Defendant objects to answering plaintiff's questions numbered 1, 2, 3, 4, 5, and 6 of Plaintiff's First Set of Interrogatories filed herein on May 13, 1976, on the grounds that the administrative burden entailed would be unreasonably oppressive and expensive. No records are maintained by defendant which would enable it to answer the questions propounded.

This Court has the authority to protect a party from answering interrogatories if it would prove unduly burdensome and oppressive. *E.g. Boroman* v. *General Motors Corp.*, 64 F.R.D 62 (E.D. Pa. 1974), *Acktiebolagt Vargos* v. *Clark*, 8 F.R.D. 635 (D. D.C. 1949).

> Clearly an interrogated party must furnish relevant information which can be obtained without great

> labor expense. It is equally clear to me that, desirable as discovery process may be, it should not place upon a defendant the burden of many thousand man hours of labor and the expense of many thousands of dollars.

Tivoli Realty v. *Paramount Pictures*, 10 F.R.D. 201, 203 (D. Del. 1950).

It is just such an enormous expenditure of labor and money, in this case tax dollars, which answering the plaintiff's interrogatories would require. Due to the structure and organization of the Social Security Records, a folder-by-folder review would be required to answer plaintiff's interrogatories. The minimum estimated cost for this procedure to take even a valid sampling of the records would be in excess of $1,000,000, for the substantial sample which would be required. If overtime is required, the cost would exceed $1,500,000. The use of existing District Office personnel in such a time consuming undertaking could also cause labor relations and morale problems and would certainly detract from the performance of their essential functions. (See affidavit of Barry Powell, Acting Deputy Assistant Bureau Director of Policy, Standards, and Systems, attached hereto as Exhibit "A.")

It is submitted that this court should weigh the labor and expense involved in compiling the data requested against the value of the information sought to be obtained. *See, e.g., V. D. Anderson Co.* v. *Helena Cotton Oil Co.*, 117 F.Supp. 932 (D. Ark. 1954). In this case the answers to the questions do not go to jurisdiction or to the merits. Instead, they are directed at the establishment of a class. The tremendous outlay of thousands of manhours and hundreds of thousands of dollars which would be required is simply not justified.

Accommodation can be made by the court between answering none of the interrogatories and answering all of them in full. *E.g., Caldwell-Clements* v. *McGraw Hill Pub. Co.*, 12 F.R.D. 531 (S.D. N.Y. 1952). Defendant herein offers as such an accommodation the only relevant figures readily obtainable from Social Security Records:

The total number of SSI recipients whose cases were in NO 3 status (nonpay status due to suspension or denial) pursuant to 42 U.S.C. § 1382(f) was, as of April 30, 1976, 7,426. (See affidavit of Barry Powell, attached as Exhibit "A.") This total is not a cumulative count as none is available. It is subject to change as records pass from pay status to NO 3 pay status depending upon current residence status.

Conclusion

For the reasons stated above, defendant objects to answering plaintiff's interrogatories.

DATED: November 19, 1976

TERRY J. KNOEPP
United States Attorney

/s/ D. Michael Waltz
D. MICHAEL WALTZ
Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Civil Action No. 75-1103-GT

GRACE AZNAVORIAN, individually (and on behalf of all other aged, blind or disabled persons similarly situated); Centre de Accion Social Autonomo, an unincorporated association; C.A.S.A. JUSTICIA, National City, an unincorporated association, PLAINTIFFS

vs.

DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, individually and in his official capacity, DEFENDANT

AFFIDAVIT OF BARRY POWELL

I, Barry Powell, being first duly sworn, deposes and says as follows:

I am Acting Deputy Assistant Bureau Director for Operating Policies, Standards and Systems (Policy) of the Bureau of Supplemental Security Income (SSI), Social Security Administration, Department of Health, Education and Welfare. I have authorized employees under my supervision to determine the availability of the information requested by Plaintiff in this case and the administrative burden and cost involved in collecting it. I have been advised as follows:

As of April 30, 1976, the total number of SSI cases in NO 3 Payment Status (nonpayment as the result of suspension or denial) pursuant to 42 U.S.C. § 1382(f) was 7,426. This is not a cumulative count of denials and suspensions. This total is a count of records in this pay status as of the date shown only. A record can pass from pay status to NO 3 Payment Status to pay status depending upon the recipient's residence. Originally denied claims are deleted in the Social Security Records (SSR) process when the original decision is later re-

versed. Also, cases originally awarded but subsequently placed in NO 3 Payment Status are included in the total.

Due to the structure of the SSR no records of affirmations of suspensions, and/or denials are readily available at either the reconsideration or appeals levels. Such information could be accumulated only through a folder-by-folder review. The following estimates are for an SSA study to ascertain the number of SSI recipients whose benefits were suspended, interrupted or denied pursuant to 42 U.S.C. § 1382(f); those who requested a reconsideration of the suspension, interruption or denial; those who requested a hearing; and those who requested a review by the Appeals Council.

The Division of Appraisal, OPO, estimates that because of the small number of cases involved, a substantial sample (about 15 percent) of the 4,329,352 SSI recipents would be required—approximately 665,000 cases to ensure a reliable national sample. A folder review of each of these 665,000 cases would require about 10 minutes staff time in the DO or RSI Program Service Center. The positions involved in the DO would be Service Reps, Data Review Technicians, and Claims Development Clerks, representing on average grade level of a GS-7 ($12,600 annual salary).

Considerable overtime would probably be required for this project. The personnel available are the same District Office employees who must work with the continuing problems of claimants and beneficiaries. These offices are usually quite busy helping people with their social security, SSI, and Medicare problems. To take employees who are doing such essential work and put them to work on a study such as this would result in a decline in the quality of service in the offices involved. Thus, overtime would probably have to be resorted to in most offices. In addition to the higher cost of overtime, there is also the problem of pressing employees to work overtime which could result in labor relations or union problems.

The estimated total manpower and cost which would be involved are as follows:

Staffing—About 84 manyears

84 persons	Full time	1 year
168 persons	Full time	6 months
1,008 persons	Full time	1 month

Administrative Costs (salaries)

Regular Time	—	$1,058,400.00
or		
Overtime	—	$1,587,600.00

/s/ Barry Powell
BARRY POWELL
Acting Deputy Assistant
Bureau Director for
Operating Policies,
Standards, and Systems
(Policy)
Bureau of Supplemental
Security Income

Subscribed and sworn to before me this 12th day of November, 1976.

/s/ Patricia B. Pyles
Notary Public

My Commission expires on July 1, 1978.

TERRY J. KNOEPP
United States Attorney
D. MICHAEL WALTZ
Assistant United States Attorney
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940 Front Street, Rm. 5-N-19
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Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 75-1103-GT

[Filed Dec. 27, 1976]

GRACE AZNAVORIAN, et al., PLAINTIFFS

v.

F. DAVID MATHEWS, etc., DEFENDANT

ANSWERS TO INTERROGATORIES

TO: THE PLAINTIFF AND HER ATTORNEY OF RECORD, VICTOR HARRIS:

Pursuant to Federal Rules of Civil Procedure 33, the defendant answers the plaintiff's interrogatories.

INTERROGATORY 10

Please state how many of the 7,426 cases identified above are of individuals who have in fact permanently emigrated from the United States.

ANSWER 10

The answer to this question is not available. The information requested is not maintained by the Social Security Administration. See Affidavit of Barry Powell, attached hereto as Exhibit "A" and incorporated herein by this reference.

INTERROGATORY 11

Please state the number of months a case remains in 'NO 3 Payment Status pursuant to 42 U.S.C. § 1382(f)' if the original nonpayment decision is not appealed.

ANSWER 11

Section 1611(f) of the Act states: "Notwithstanding any other provision of this title, no individaul shall be considered an eligible individual for purposes of this title for any month during all of which such individual is outside the United States . . . . For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he had been in the United States for a period of 30 consecutive days."

Thus, when an individual is outside the United States for a full month (or at least 30 consecutive days) he is placed in NO 3 payment status.

The Regulations, 20 C.F.R. (416.1335), state: "Eligibility for benefits is terminated when 12 calendar months have elapsed after suspension for ineligibility if the beneficiary has not reestablished eligibility."

Thus, an individual would remain in NO 3 payment status until: (1), he has been in the United States for 30 consecutive days, at which time payments would resume if he were not otherwise ineligible; or (2), he has been in suspense status (NO 3) for 12 calendar months, at which time he would be terminated.

INTERROGATORY 12

Please state the approximate number of months an individual's case remains in 'NO 3 Payment Status pursuant to 42 U.S.C. § 1382(f)' if the individual stays outside the country for more than 90 days.

ANSWER 12

See answer to Interrogatory No. 11, *supra.*

INTERROGATORY 13

Please state the total number of SSI cases in 'NO 3 Payment Status pursuant to 42 U.S.C. § 1382(f)' as of the last day of each month from September, 1975 through October, 1976. If such totals are not available for each of said dates, please provide such totals for the dates closest thereto and state those dates.

ANSWER 13

No counts are available prior to February 1976.

February 76	6,779
March	7,102
April	7,425
May	7,898
June	8,304
July	8,745
August	9,195
September	4,951*
October	4,823*

* Inactive records which had received no payments during a 12 month period were purged from the Supplemental Security Record.

INTERROGATORIES 14 and 14(a)

Please identify the sources and records upon which you base your answers to interrogatories 10 through 13.

Please state the names, official prositions [sic], and last known business addresses of each custodian of such records.

ANSWERS 14 and 14(a).

Mr. Barry Powell, Acting Deputy Assistant Bureau Director for Operating Policies, Standards and Systems

(Policy) of the Bureau of Supplemental Security Income (SSI), Social Security Administration, Department of Health, Education and Welfare, Rockville, Maryland, and the records are maintained in Mr. Powell's custody.

INTERROGATORY 15

Please state the full names, business addresses, and official positions of each person who participated in providing the answers to these interrogatories.

ANSWER 15

See answer to Interrogatory No. 14, *supra.*

INTERROGATORY 16

Please state the full name, present business address, and official position or relation to defendant Mathews of the person signing or verifying the answers to these interrogatories.

ANSWER 16

The answers to interrogatories are signed by the Assistant United States Attorney, attorney for defendant.

Dated: December 22, 1976

TERRY J. KNOEPP
United States Attorney

/s/ D. Michael Waltz
D. MICHAEL WALTZ
Assistant U.S. Attorney

EXHIBIT "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 73-1103-GT

GRACE AZNAVORIAN, et al., PLAINTIFFS

v.

F. DAVID MATHEWS, Secretary of Health, Education and Welfare, DEFENDANT

AFFIDAVIT OF BARRY POWELL

I, Barry Powell, being first duly sworn, depose and say as follows:

I am Acting Deputy Assistant Bureau Director for Operating Policies, Standards and Systems (Policy) of the Bureau of Supplemental Security Income (SSI), Social Security Administration, Department of Health, Education and Welfare. I have authorized employees under my supervision to ascertain the information requested by Plaintiff in this case. I have been advised as follows:

10. The answer to this question is not available. The information requested is not maintained by the Social Security Administration.

11 and 12. Section 1611(f) of the Act states: "Notwithstanding any other provision of this title, no individual shall be considered an eligible individual for purposes of this title for any month during all of which such individual is outside the United States . . . . For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he had been in the United States for a period of 30 consecutive days."

Thus, when an individual is outside the United States for a full month (or at least 30 consecutive days) he is placed in NO 3 payment status.

The Regulations, 20 C.F.R. (416.1335), state: "Eligibility for benefits is terminated when 12 calendar months have elapsed after suspension for ineligibility if the beneficiary has not reestablished eligibility."

Thus, an individual would remain in NO 3 payment status until: (1), he has been in the United States for 30 consecutive days, at which time payments would resume if he were not otherwise ineligible; or (2), he has been in suspense status (NO 3) for 12 calendar months, at which time he would be terminated.

13. No counts are available prior to February 1976.

February 76	6,779
March	7,102
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June	8,304
July	8,745
August	9,195
September	4,951*
October	4,823*

* Inactive records which had received no payments during a 12 month period were purged from the Supplemental Security Record.

14 and 14(a). These questions have been answered in the introductory paragraph.

/s/ Barry Powell
BARRY POWELL
Acting Deputy Assistant
Bureau Director for
Operating Policies,
Standards, and Systems
(Policy)
Bureau of Supplemental
Security Income

Subscribed and sworn to before me this 16th day of December, 1976.

/s/ Patricia B. Pyles
Notary Public

My Commission expires on July 1, 1978.

MICHAEL H. WALSH
United States Attorney
D. MICHAEL WALTZ
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940 Front Street, Room 5-N-19
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Telephone: (714) 293-5662

Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 75-1103-GT

[Filed Feb. 7, 1978]

GRACE AZNAVORIAN, et al., PLAINTIFFS

v.

JOSEPH A. CALIFANO, JR., etc., DEFENDANT

FILING OF PROPOSED ORDER GRANTING PARTIAL STAY OF JUDGMENT

On January 23, 1978, the court in the above-captioned action heard oral argument regarding Defendant's Motion For a Partial Stay of Judgment. After argument, the court indicated that it would grant a partial stay of the Judgment and stated that the court would draw up and issue the stay Order. Subsequent to the court proceedings, counsel for plaintiffs and defendant met with the law clerk for Judge Thompson and it was suggested by the law clerk that counsel for defendant prepare and file a proposed stay Order to assist the court in the preparation of the final Order. Defendant hereby

tenders his proposed stay Order by filing same with the court and serving counsel for plaintiffs with copies.

Respectfully submitted,

MICHAEL H. WALSH
United States Attorney

/s/ D. Michael Waltz
D. MICHAEL WALTZ
Assistant United States Attorney

OF COUNSEL:

Randolph W. Gaines
Chief of Litigation

John B. Watson
Attorney
Social Security Division
Office of the General Counsel
Department of Health, Education
and Welfare

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 75-1103-GT

GRACE AZNAVORIAN, et al., PLAINTIFFS

v.

JOSEPH A. CALIFANO, JR., etc., DEFENDANT

ORDER

Upon consideration of Defendant's Motion For Partial Stay of Judgment, plaintiffs' opposition thereto, and after oral argument by counsel for the parties,

IT IS HEREBY ORDERED THAT:

1. Paragraph 3 of the Judgment of this court entered September 6, 1977, which grants individual and class relief pursuant to the provisions of this court's Order filed on August 23, 1977, is hereby stayed to the following extent:

(a) That portion of paragraph 6 of this court's Order which requires defendant to mail within 30 days of approval by the court class relief notices to all persons who received SSI benefits at any time from September 26, 1975, to August 23, 1977, is stayed until 30 days after the Supreme Court renders a final decision in this action.

(b) Paragraph 8 of this court's Order which requires defendant to file an affidavit with the court, and serve a copy on plaintiffs' counsel, attesting to timely mailing of the class relief notices is stayed until the Supreme Court renders a final decision in this action.

(c) Paragraphs 5, 6(c), (d) and (e), and 7 of the court's Order which require defendant to render redeterminations regarding the denials, interruptions, suspensions and terminations of the SSI benefits of certain class members and require defendant also to pay to such class members the benefits originally withheld should

they demonstrate United States residency during the disqualification period are stayed until the Supreme Court renders a final decision in this action.

2. To the extent that defendant feels that the Judgment of the court in this action may have a prospective effect on non-class members, the court stays any such prospective relief until the Supreme Court renders a final decision in this action.

3. With respect to paragraph 4 of the court's Order which reverses and declares null and void the denials, suspensions, interruptions and terminations of SSI benefits based on 42 U.S.C. 1382(f) for certain class members, defendant shall implement the process to identify such class members as set out in paragraphs 1 and 2 of the second Affidavit of Audrey M. Hopkins dated January 13, 1978. Defendant is required to prepare in its entirety a computer program that can be utilized to select all NO 3 designated individuals for which the computer records are reliable. The computer program will be coded, adequately tested and debugged and will be available for the selection of NO3 files no later than the date on which the Supreme Court renders a final decision in this action.

Dated:

GORDON THOMPSON, JR.
Judge
United States District Court

Copies to:

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Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 75-1103-GT

GRACE AZNAVORIAN, et al., PLAINTIFFS

v.

JOSEPH A. CALIFANO, JR., etc., DEFENDANT

CERTIFICATE OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

IT IS HEREBY CERTIFIED that:

I, Joyce A. Milhouse, am a citizen of the United States over the age of eighteen years and a resident of San Diego County, California; my business address is 940 Front Street, San Diego, California; I am not a party to the above-entitled action; and

On February 7, 1978, I deposited in the United States mail at San Diego, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Filing of Proposed Order Granting Partial Stay of Judgment addressed to See attached list the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of February, 1978.

/s/ Joyce A. Milhouse

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil Action No. 75-1103-GT

[Received Feb. 21, 1978]

GRACE AZNAVORIAN, et al., PLAINTIFFS

vs.

JOSEPH A. CALIFANO, JR., etc., DEFENDANT

PLAINTIFFS' OBJECTIONS TO DEFENDANT'S PROPOSED "ORDER" GRANTING A PARTIAL STAY OF JUDGMENT

This Court only stayed those portions of its final Order of August 23, 1977 ("Order") which required defendant to mail notices to certain class members and to take the steps subsequent thereto in redetermining their eligibility for Supplemental Security Income ("SSI") benefits. These stayed portions of its Order are contained exclusively in paragraphs 5, 6 at lines 30-32, 7 and 8. Beginning with the obvious premise that only that needs to be stayed which has been ordered, plaintiffs make the following objections to defendant's proposed Order lodged on February 7, 1978 ("proposal"), and submit the attached "Proposed Order Granting Partial Stay Of Judgment" ("Pf. Proposed Order"), which avoids their objections:

1. Sub-paragraphs 1(a), (b) and (c) of defendant's proposal unnecessarily paraphrase the stayed paragraphs of the final Order. It avoids any confusion simply to refer to the stayed paragraph by number. [*See* Pf. Proposed Order ¶ 1.a.] Where only part of a paragraph of the final Order is stayed, it avoids confusion simply to quote it. [*See* Pf. Proposed Order ¶ 1.b.]

2. Sub-paragraph 1(c) of defendant's proposal also improperly includes sub-paragraphs 6(c), (d) and (e) of the final Order. Those sub-paragraphs specify the *contents* of the class relief notice, whose preparation has not been stayed. Apparently, defendant inserted them in his proposal because he mistakenly believed they required him to begin to conduct redeterminations of eligibility and the following appeal procedure, which in fact are required only by paragraph 5 of the Order. Granting a stay as to paragraph 5 of the Order accomplishes that purpose.

3. Paragraph 2 of defendant's proposal is totally unnecessary. The Secretary asks the Court to stay any "prospective relief" "[t]o the extent that *defendant feels* that the Judgment of the court in this action may have a prospective effect on non-class members. . ." (Emphasis added.) Apparently, he believes that the court permanently enjoined him from applying 42 U.S.C. § 1382(f) to non-class members [*See* Def. Mem. Supp. Stay at 6-7; Def. Reply Mem. Supp. Stay at 7-8] and to prepare and

publish new regulations and Claims Manual sections. [Def. Reply Mem. Supp. Stay, Hopkins Affidavit ¶ 4.]

Whatever defendant "feels" he has to do is irrelevant to what the Court specifically required him to do. Not one word in the Court's Opinion, Order or Judgment grants the injunctive relief the Secretary now wants this Court to stay. The Court expressly limited all relief to class members, and specifically defined that relief in its Order.

This Court did not have jurisdiction to grant prospective relief to non-class members for two reasons. First, 42 U.S.C. § 405(g) authorized the Court to grant relief only to class members before the Court, which it did. *See Jimenez* v. *Weinberger*, 523 F.2d 689, 694 (7th Cir. 1975). Second, 28 U.S.C. § 2282 prohibits a single judge from enjoining the enforcement of a federal statute, which it did not do. On November 8, 1976, the Court approved a Stipulation between plaintiffs and defendant by which plaintiffs "abandoned all requests heretofore entered to enjoin defendant from enforcing" Section 1382(f). Its final Order is consistent with that Stipulation.[1] The Secretary did not argue in his Jurisdictional Statement in the Supreme Court that this Court granted any prospective relief to non-class members. Finally, the Secretary has never argued that he may be held in contempt for applying Section 1382(f) to non-class members.[2]

The only conceivable effect of adding paragraph 2 of defendant's proposal is to create a technical ground[3] to attack this Court's decision in the Supreme Court. Otherwise it is wholly unnecessary.

4. Paragraph 3 of defendant's proposal incorrectly refers to paragraph 4 of the Order as its basis. That paragraph merely defines the parameters of the class to be granted relief. Paragraph 6 requires notification to the class. Since the process of identifying the class members is associated with notification, Paragraph 6 of the Order is its proper basis.

[1] Thus, plaintiffs have not requested any less relief than they have since the Stipulation.

[2] This Court's desire to have defendant follow its Judgment prospectively, will be served when the Supreme Court affirms the decision, since it is only the Supreme Court's decisions which declare the "supreme law of the land."

[3] If the Supreme Court concluded that the relief granted required a three-judge court, it would vacate the Court's order and remand with directions to convene one. *McLucas* v. *DeChamplain*, 421 U.S. 21, 32 n.12 (1975).

Finally, to avoid any dispute about the steps to identify the class which the Court has not stayed, and their cost, the stay order should incorporate the specific steps set forth in the second Audrey Hopkins Affidavit (Jan. 13, 1978). Subsequent to the hearing on the stay motion on January 23, 1978, counsel for the parties discussed the steps which defendants could take to identify class members. Defendant's counsel and expert represented that many class members would change their address between now and any final decision of the Supreme Court, and that the selection program would have to be rerun to pick up the changed addresses. Based on these representations, and to save the cost of running the selection process twice, plaintiffs' counsel agreed that the identification process could stop short of the actual selection stage and end with the "testing-and-debugging" of the program. Defendant's expert estimated that such a process would run through the first three steps in the second Hopkins Affidavit, and through about 6 to 8 hours of the fourth step, labelled "Computer Time—Test and Select Appropriate Recipients." Plaintiffs believe that specific reference to the steps of the Hopkins Affidavit will clarify precisely what defendant must do.

For all these reasons, plaintiffs request that the Court adopt their proposed Order Granting Partial Stay of Judgment.

Dated: February 17, 1978

Respectfully submitted,

LEGAL AID SOCIETY OF
SAN DIEGO, INC.

By: /s/ Charles Wolfinger
CHARLES WOLFINGER
One of the attorneys
for Plaintiffs

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil Action No. 75-1103-GT

[Entered Feb. 17, 1978; Filed Feb. 22, 1978]

GRACE AZNAVORIAN, et al., PLAINTIFFS

vs.

JOSEPH A. CALIFANO, JR., etc., DEFENDANT

PLAINTIFFS' PROPOSED ORDER GRANTING A PARTIAL STAY OF JUDGMENT

Upon consideration of Defendant's Motion For Partial Stay of Judgment, plaintiffs' opposition thereto and the oral argument of counsel for the parties,

IT IS HEREBY ORDERED THAT:

1. Paragraph 3 of the Judgment entered on September 6, 1977, which incorporates the provisions of the Court's final Order filed on August 23, 1977 ("Order"), is hereby stayed until the Supreme Court renders a final decision in this action, to the following extent:

a. Paragraphs 5, 7 and 8 of the Order in their entirety; and,

b. Paragraph 6, lines 30-32, of the Order: ". . . defendant shall mail it [i.e., the class relief notice] within thirty (30) days to all persons who received SSI benefits at any time from September 26, 1975 to the date this Order is entered."

2. Pursuant to Paragraph 6 of the Order, defendant shall implement the process to identify the class members by (a) preparing in its entirety a computer program that can be utilized to select all NO3 designated individuals for which computer records are reliable, (b) coding, adequately testing and debugging the program and (c) having it available for selection of NO3 files not later than the date on which the Supreme Court renders a final decision in this action. These steps are set forth in the Affidavit of Audrey Hopkins (Jan. 13, 1978) ¶ 2 "Preparation of Systems Requirement," "Computer Analysts Bureau of Data Processing," "Computer Programmers Bureau of Data Processing," and "Computer Time—Test and Select Appropriate Recipients" (approximately 6-8 hours).

Dated: February 21, 1978

/s/ Gordon Thompson, Jr.
GORDON THOMPSON, JR.
Judge
United States District Court

SUPREME COURT OF THE UNITED STATES

Nos. 77-991 and 77-5999

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE, APPELLANT

v.

GRACE AZNAVORIAN, ETC.; and

GRACE AZNAVORIAN, ETC., APPELLANT

v.

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE

APPEALS from the United States District Court for the Southern District of California.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of one hour is allotted for oral argument.

March 20, 1978

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